

**:::IN THE COURT OF CHIEF JUDICIAL MAGISTRATE:::,
:::DIBRUGARH:::ASSAM:::**

Ref : G.R. Case No. 1549/2015

U/S. 341/323/34 OF IPC

State of Assam

-Vs-

1. Horen Barla
2. Jiten Barla.....Accused

**PRESENT : A.K. BARUAH, LL.M., AJS.
Chief Judicial Magistrate,
Dibrugarh.**

APPEARANCE:

Advocate for the Prosecution : Smti. D. Gogoi.
Advocate for the Defence : Mr. K.K Gogoi.
Date of evidence : 16-06-17, 07-11-17,
20-01-18, 09-04-18,
Date of argument : 29-04-2019.
Date of judgment : 09-05-2019.

J U D G M E N T

1. The case of the prosecution in brief is that on 11-06-2015,the complainant namely Philip Bhuyan lodged an FIR in Tengakhat police station stating that Sri Haren Barla and his brother Jiten Barla restrained the complainant on the road and used obscene words against him and thereafter threatened to kill him on 09.06.2015. He and his said brother gathered several weapons in

the house to murder the complainant . They repeatedly threatened to kill the complainant and his unit members to withdraw the case, which was filed against Horen Barla, in the court of CJM, Dibrugarh being registered as 68C/15.

2. On the basis of the FIR lodged by the complainant, a case, bearing Tengakhat P.S Case No. 25-2015 was registered u/s 341/294/506/34 IPC. Police conducted investigation into the case and filed charge sheet against the accused persons namely Jiten Barla and Horen Barla u/s 341/294/506/34 IPC .
3. The accused persons appeared in this case. Copies were furnished to them u/s 207 Cr PC. The particulars of offences u/s 341/294/506/34 IPC were explained to the accused persons, to which they pleaded not guilty and claimed to be tried.
4. During the trial of the case, the prosecution side examined 5(Five) P.W's in this case. The defence plea is of total denial. The defence did not adduce any evidence. Statements of the accused persons were recorded U/s 313 Cr.P.C.
5. I have heard the learned counsel for the accused and learned Asst. P.P for the State. Having heard both sides and after perusing the materials on record, the following points for determination are framed for the just decision of the case :-

6. **POINTS FOR DETERMINATION :-**

- i. Whether on 09-06-15, the accused persons in furtherance of common intention wrongfully restrained the complainant namely Philip Bhuyan, on the road?
- ii. Whether on the same date and place, the accused persons in furtherance of common intention uttered obscene words against the complainant namely Philip Bhuyan, in order to annoy him in public ?

- iii. Whether on the same date and place, the accused persons in furtherance of common intention threatened the complainant namely Philip Bhuyan ?

DECISION AND REASON FOR THE DECISION :-

7. PW1 (Shri. Philip Bhuyan) deposed in his evidence that he is the complainant of this case. He had filed this case against Jiten Barla and Haren Barla. He further stated that about four years back, they received a tractor from the state government in the name of "Kishan Atama Sahay Gut" and *he was the president of the said Gut*. Accused Haren Barla was the secretary of the GUT. The accused persons without informing the GUT, received the tractor which had come in the name of their GUT from the Tea Welfare Office at Dibrugarh. They also came to know that the accused after receiving the tractor, had sold the same without informing them. After knowing the fact, they visited the Tea Welfare Office at Dibrugarh and got the proof that the accused had received the tractor that had come in the name of their GUT and they also collected the documents for proof through R.T.I. In that regard, they had filed this case against the accused Jiten Barla and Haren Barla . *After filing the case against the accused Haren Barla, accused/Haren Barla wrongfully restrained him/PW1 to cause injury to him while P.W.1 was going through the village. The accused persons also threatened him to cause harm, even if they had to go to the jail ,they wanted to harm P.W.1. P.W.1 stated that the accused persons also used filthy language against their GUT. Further, the accused Haren Barla had threatened him/PW1 to withdraw the case that he had filed against him/accused person. When the accused threatened him/P.W.1, many people gathered at the place of occurrence and he was saved by them. Later on, PW1 filed this case. He exhibited the FIR as Ext. 1 and his signature in the FIR as Ext. 1(1).*

In cross examination, P.W.1 deposed that he had filed that case on 08-06-2014, against the accused Haren Barla before this Court. After the occurrence, this case has come out. He did not know English, thus *he did not know what is written in the Ext. 1. He had not furnished the document that he is the President of*

the "Kishan Atama Sahay Gut". He denied the suggestion that there is no GUT in the name of "Kishan Atama Sahay GUT" and neither he was the President nor Haren Barla was the secretary. The tractor was issued to the GUT from the MLA fund which he had applied. He did not remember the date when he applied for the tractor from the MLA fund. They were not aware about the kind of tractor and the number of the tractor that was issued by the State Government to their GUT. He also denied the suggestion that they had not applied for the tractor from the MLA fund. If there is existence of a GUT, there is a joint account of the Secretary and President of the GUT. He also denied the suggestion that Haren Barla had not received any tractor or did not sell the same to any person nor it was issued by the Government to their GUT. He further stated that he had not submitted any document before this court that one tractor was issued in the name of their GUT and it was received by the accused Haren Barla. They had submitted the report of the RTI to the police. He/PW1 also denied the suggestion that no any case had been filed against Haren Barla for misappropriation of the tractor issued in the name of "Kishan Atama Sahay Gut" and nor any document was submitted regarding this case. Distance from his house to the police station is nearer than Dibrugarh. He denied the fact that the accused persons did not wrongfully restrain him when he was going through the village and also denied that the accused persons did not use filthy language to their GUT. He denied the fact that the accused Haren Barla did not threaten him to withdraw the earlier case filed against him/accused. He denied the suggestion that he did not inform the police when the accused Haren Barla asked him to withdraw the case filed against him/accused. He/PW1 also denied the suggestion that he did not state before the police that many people did not gather at the place of occurrence. Police inquired PW1 about the matter. He also denied the suggestion that he had deposed falsely before this court and by taking assistance of the earlier case, he had filed this false case.

8. PW2 (Sri. Debananda Orang) deposed in his evidence that he knew the complainant and the accused person. On 08-06-2015,

he was the member of the Kishan Atma Sahay GUT. They received the tractor from the Government in the name of the GUT. Accused Horen Barla sold the tractor without information which was received from the Government. After 2 and 2 ½ months, they went to their office and there, they came to know that Haren Barla had already received that tractor from them which had come in the name of their GUT. After that, Haren Barla did not make any communication with them. Thus, this case was filed.

In cross-examination, P.W.2 deposed that he did not remember when and in which year, their Kishan Atma Sahay Gut was formed. He denied that the accused Haren Barla was not the secretary of their Gut. The tractor which was allotted to their GUT was not seen by them and it was not brought to their village also. He/PW2 denied the suggestion that no tractor was allotted to their GUT and accused Haren Barla did not sell any tractor. He/PW2 denied that a false case had been lodged against the accused Haren Barla and he adduced false evidence.

- 9.** PW3 (Sri. Rajen Urang) deposed in his evidence that he knows the complainant and also the accused persons. The occurrence took place about 2-3 years ago. He is the member of the Kishan Atma Sahay Gut. Horen Barla had not sold any tractor given in the name of the GUT. He/PW3 did not remember who had donated the tractor to them.

In cross-examination P.W.3 deposed that he had never seen the tractor himself. He denied the suggestion that accused Horen Barla had not sold any tractor which was given in the name of the GUT.

- 10.** PW4 (Sri. Changra Urang) deposed in his evidence that he knew the complainant and the accused is also known to him, as he/accused is his neighbour. About two years ago, he was at home. Molop Bhuyan is also known as Philip Bhuyan. At that time, he/PW4 had seen that the accused person had abused the complainant and had an altercation with them.

In cross-examination, P.W.4 denied the suggestion that the accused person did not abuse the complainant and neither had any altercation with him.

- 11.** PW5 (Sri. Gobin Urang) deposed in his evidence that he knows the complainant as well as the accused of this case. On 09-06-2015, when he was standing in front of his house , he met the accused Haren Barla. He/accused disclosed before him that he would kill the complainant and after killing the complainant, he would surrender before the police. The accused gave such intimidation as he had another criminal case pending with the complainant.

In cross-examination, P.W5 deposed that he had a good relationship with the complainant . He had accompanied him/PW5 to the Court. He/PW5 denied the suggestion that he had been tutored by the complainant to depose in the court.

- 12.** From the above discussion of evidence, it appears that although PW1 deposed in his evidence that the accused wrongfully restrained him and threatened him, but PW1 being the complainant cum informant failed to prove the contends of the FIR(Ext1) lodged by him by stating that *he did not know what was written in the Ext. 1*. Again, although PW1 deposed that he was the President of the GUT(organization), but in his cross-examination, he admitted that *he had not furnished the document that he is the President of the "Kishan Atama Sahay Gut"*. Moreover, admittedly, there was prior case filed by PW1 against the accused regarding misappropriation of some tractor by the accused.

Hence, considering the above points, I am of the view that the evidence of PW1 is not wholly reliable. In other words, there is need of corroboration of the evidence of PW1 by other convincing evidence.

- 13.** From the evidence of PW2, PW3, PW4 and PW5 , it is not established that the accused wrongfully restrained PW1 on the road, used obscene words against him and threatened him on 09-06-15. In other words, the evidence of PW1 is not corroborated by any other convincing evidence or witness.
- 14.** PW1 deposed that when the accused threatened him/P.W.1, *many people gathered at the place of occurrence and he was saved by them. But, the prosecution side failed to produce any such person who saw the occurrence of the incident.* In other words,

the case of the prosecution is not proved beyond all reasonable doubt from the evidence of the PWs as discussed above. Hence, I hold the points for determination in the negative.

- 15.** In the result, I have not found the accused guilty in this case. Hence, I acquit them from the charges of the case and set them at liberty forthwith.

The bail bonds will be in force for 6 (six) months from today.

Given under my hand and seal of this court on this 9th day of May, 2019.

(A.K. Baruah)

Chief Judicial Magistrate,
Dibrugarh::ASSAM

Appendix

Prosecution Witness :-

PW1 :- Shri. Philip Bhuyan
PW2 :- Shri. Debananda Urang
PW3 :- Shri. Rajen Uran
PW4 :- Shri. Changra Urang
PW5 :- Shri. Gobin Urang

Defence witness :-

None

Exhibits :-

Prosecution exhibits :-

Exhibit 1 :- FIR.

Defence exhibits :-

None

Court witness :- None.

Court exhibits :- None.

(A.K. Baruah)

Chief Judicial Magistrate,
Dibrugarh::ASSAM